

REMARKS

Applicant thanks Examiner Robert Canfield for the courtesies extended to the undersigned during the telephone interview of April 18, 2011. During the interview the issues of a defective reissue declaration under 35 U.S.C. 251 and the rejection of the claims was discussed. A summary of the interview is found in the Interview Summary mailed April 19, 2011, and is supplemented in the following discussion.

Claims 6, 9-20, 26, 27, 33 and 34 are pending in the application. This amendment amends claims 6 and 9 to more positively recite applicant's patentably novel invention. No claims are allowed or indicted allowable.

The Office Action states that the reissue oath/declaration filed with this application is defective. The Office Action alleges that the declaration is defective because the declaration alleges that the error in the patent which is relied upon to support the reissue application is not an error upon which a reissue can be based. The Office Action states that any error in the claims must be identified by reference to the specific claim and the specific claim language wherein the error rises. During the telephone interview, the Examiner indicated that the correction should also included the amendment to claim 6 to include the limitations of cancelled claims 1-4 as corrective action.

To eliminate this issue, a new Declaration is filed with this Amendment. The Declaration states that the Office Action dated March 2, 2010 in the above matter found claims 1-4 of U.S. Patent No. 5,813,191 to be unpatentable under 35 U.S.C. 102(b) in view of U.S. Patent D 205,824. The error was corrected by canceling claims 1-4 and amending claim 6 of U.S. Patent No. 5,813,191 to include the subject matter of claims 1-4.

Based on the forgoing, applicant respectfully submits that the Declaration filed with this Amendment states a re-issuable error and states how the error is corrected.

Claims 6, 9-20, 26, 27, 33 and 34 are rejected as being based upon a defective reissue declaration under 35U.S.C. 251 as set forth above.

Applicant respectfully traverses the rejection of claims 6, 9-20, 26, 27, 33 and 34 as being based upon a defective reissue declaration under 35U.S.C. 251 as set forth above.

Applicant has discussed above that the Declaration filed with this Amendment states a re-issuable error and states how the error is corrected.

Based on the foregoing, applicant respectfully requests withdrawal of the rejection of claims 6, 9-20, 26, 27, 33 and 34 as being based upon a defective reissue declaration under 35U.S.C. 251.

Claims 6 and 9-12 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

The Office Action alleges that the amendment filed December 17, 1997 (incorrectly stated in the Office Action as January 6, 1998) added the limitation "the first and the second legs are spaced from and out of contact with one another" and argued the limitation as a patentable distinction, and that this limitation is not recited in independent claims 6 and 9.


Applicant respectfully traverses the rejection of claims 6 and 9-12 under 35 U.S.C. 251, however, to eliminate this issue claims 6 and 9 are amended to include the limitation (see attachment titled "PRESENTATION OF CLAIMS PURSUANT TO 37 C.F.R. 1.173(c)"). Support for the amendments to claims 6 and 9 is found, among other places, in claim 1 of U.S. Patent No. 5,813,191.

Based on the foregoing, applicants respectfully request admission of the amendments to claims 6 and 9; consideration of claims 6, 9-20, 26, 27, 33 and 34; withdrawal of the rejection of claims 6 and 9-12 under 35 U.S.C. 251, and requests allowance of claims 6, 9-20, 26, 27, 33 and 34.

This Amendment represents a sincere effort to place this application in condition for allowance. In the event issues remain, the Examiner is invited to call Mr. Andrew Siminerio at 412-434-4645, or the undersigned to discuss those issues before further action on the case is taken.

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PRESENTATION OF CLAIMS PURSUANT TO 37 C.F.R. 1.173(c)

Claims 1-5 were cancelled without prejudice by one or more previously filed amendments.

Claim 6 is amended by this amendment. The underlined and bracketed portion of Claim 6 presented below identifies the amendments made by this Amendment to claim 6 of the Amendment filed February 23, 2011. Support for the amendment to claim 6 is found, among other places, in claim 1 of U.S. Patent No. 5,813,191.

Claim 6 (Amended). An elongated spacer stock used in the manufacture of a spacer frame to separate sheets of an insulating unit, the spacer stock comprising:

an elongated base;

a first elongated leg having a first member and a second member joined together to have a generally U-shaped cross section;

a second elongated leg having a first member and a second member joined together to have a generally U-shaped cross section;

wherein the first members of the first and second legs are joined to the base to provide the spacer stock with a generally U-shaped cross section, wherein an open end of the U formed by the first and second legs and the base is open in a first direction, the U-shaped cross section of the first leg open in a second direction, and the U-shaped cross section of the second leg open in the second direction with the first and second directions opposite to one another;], and]

wherein the first and second legs are spaced from and out of contact with one another;

wherein the first and second members of the first leg are spaced from and out of contact with one another; the first and second members of the second leg are spaced from and out of contact with one another; the second member of the first and the second legs are spaced from one another, and the

first and second legs are connected to one another only by the base to provide only one thermal conducting path from the first leg to the second leg, and

wherein the end of the second member of the first and second legs is radiused, and the radiused end of the second members of the first and second legs are spaced from the inner surface of the elongated base.

Claims 7 and 8 were cancelled without prejudice by one or more previously filed amendments.

Claim 9 is amended by this amendment. The underlined portion of Claim 9 presented below identifies the amendment made by this Amendment to claim 9 of the Amendment filed February 23, 2011. Support for the amendment to claim 9 is found, among other places, in claim 1 of U.S. Patent No. 5,813,191.

Claim 9 (Amended). An elongated spacer stock used in the manufacture of a spacer frame to separate sheets of an insulating unit, wherein the spacer stock comprises:

a continuous elongated base;

a first elongated leg having a first member and a second member joined together to have a generally U-shaped cross section;

a second elongated leg having a first member and a second member joined together to have a generally U-shaped cross section;

wherein the first members of the first and second legs are joined to the base to provide the spacer stock with a generally U-shaped cross section with an open end of the U formed by the first and second legs and the base open in a first direction, the U-shaped cross section of the first leg open in a second direction, and the U-shaped cross section of the second leg open in the second direction with the first and second directions opposite to one another;

wherein the first and second legs are spaced from and out of contact with one another, and

wherein the first and second members of the first leg are spaced from and out of contact with one another; the first and second members of the second leg are spaced from and out of contact with one another; the second

member of the first and the second legs are spaced from one another; the first and second legs are connected to one another only by the base to provide only one thermal conducting path from the first leg to the second leg, and portions of the second member of the first and second legs are removed at positions along the spacer stock that form corners when the spacer stock is bent into the spacer frame.

Claims 10-20 are pending in the application and were amended by one or more previously filed amendments.

Claims 21-25 were cancelled without prejudice by one or more previously filed amendments.

Claim 26 is pending in the application and was amended by one or more previously filed amendments.

Claim 27 is pending in the application and is original claim 27 of U.S. Patent No. 5,813,191.

Claims 28-32 were cancelled without prejudice by one or more previously filed amendments.

Claim 33 is pending in the application and was amended by one or more previously filed amendments.

Claim 34 is pending in the application and is original claim 34 of U.S. Patent No. 5,813,191.

Claims 35-55 were cancelled without prejudice by one or more previously filed amendments.